

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

U.S. FIRE INSURANCE COMPANY, a
foreign insurer;

Plaintiff,

vs.

HARVEST INVESTORS, INC. DBA JK
MARTIAL ARTS & LEARNING CENTER,
a Washington Corporation; JUNG KUK
KIM, a Washington citizen; KATARINA
PARK, a Washington citizen; JERIMY
MURRAY and “JANE DOE” MURRAY, a
marital community; JON BROTHERTON
and DANIELLE KING, individually on
behalf of their minor child, B.B.;

Defendants.

No. 2:16-cv-01901

**COMPLAINT FOR
DECLARATORY RELIEF
(28 U.S.C. § 2201)**

Plaintiff U.S. Fire Insurance Company (hereinafter “U.S. Fire”) submits the following
Complaint for Declaratory Relief pursuant to 28 U.S.C. § 2201 and Fed. R. Civ. P. 57.

I. PARTIES

1.1 Plaintiff U.S. Fire is a foreign insurance company licensed to conduct business in
the State of Washington. U.S. Fire is organized under the laws of the State of Delaware with its

1 principal place of business located in the State of New Jersey. At all material times hereto,
2 U.S. Fire has transacted business in Washington.

3 1.2 Defendant Harvest Investors, Inc. DBA JK Martial Arts & Learning Center
4 (hereinafter “JK Martial Arts”) is a Washington corporation with its principal place of business
5 located in the State of Washington.

6 1.3 Defendant Jung Kuk Kim is an individual who, upon information and belief,
7 resides in the State of Washington.

8 1.4 Defendant Katarina Park is an individual who, upon information and belief,
9 resides in the State of Washington.

10 1.5 Defendant Jerimy Murray is an individual who, upon information and belief,
11 resides in the State of Washington.

12 1.6 Defendant “Jane Doe” Murray is an individual who, upon information and belief,
13 resides in the State of Washington. The first name of Defendant “Jane Doe” Murray is unknown
14 at this time. As a result, this Defendant is sued pseudonymously.

15 1.7 Defendants Jon Brotherton, Danielle King and their minor son B.B., upon
16 information and belief, reside in the State of Washington.¹

17 **II. JURISDICTION AND VENUE**

18 2.1 U.S. Fire reasserts Paragraphs 1.1 through 1.7 as fully set forth herein.

19 2.2 For the purposes of diversity, U.S. Fire is a citizen of the States of Delaware and
20 New Jersey. All Defendants are citizens of the State of Washington. Diversity is therefore
21 complete.

22 2.3 This action includes claims for insurance benefits that are in excess of \$75,000.

23

¹ B.B. is a minor child. As a result, B.B.’s full name has been redacted to his initials in compliance with Fed. R. Civ. P. 5.2(a)(3) and LCR 5.2(a)(3).

1 3.9 JK Martial Arts is allegedly located at 13112 39th Ave SE, Everett,
2 Washington, 98208.

3 3.10 The Complaint filed in the Underlying Action alleges that B.B. was a student at
4 JK Martial Arts.

5 3.11 Upon information and belief, Steven Wiltse (hereinafter “Wiltse”) was employed
6 by JK Martial Arts from on or about January 10, 2013, through October 5, 2014.

7 3.12 The Complaint filed in the Underlying Action alleges that Wiltse, while an
8 employee of JK Martial Arts, engaged in inappropriate sexual contact, abuse and/or molestation
9 with B.B.

10 3.13 The Complaint filed in the Underlying Action further alleges that Wiltse had also
11 shown pornography to B.B.

12 3.14 The Complaint filed in the Underlying Action also alleges that the owners and
13 employees of JK Martial Arts had reason to believe that Wiltse would abuse children at
14 JK Martial Arts.

15 3.15 The Underlying Action asserts claims against Underlying Defendants for their
16 alleged negligence arising from a failure to properly screen, hire, retain, and/or discharge Wiltse.
17 The Underlying Action also alleges claims for Underlying Defendants’ alleged failure to comply
18 with mandatory reporting obligations pursuant to RCW 26.44, and for their vicarious liability.

19 3.16 Defendants Jerimy Murray, “Jane Doe” Murray, and Katarina Park, have been
20 dismissed from the Underlying Action. The remaining Defendants in the Underlying Action are
21 Defendants JK Martial Arts and Jung Kuk Kim.

22 3.17 Underlying Plaintiffs’ claims for punitive damages have also been dismissed from
23 the Underlying Action.

B. Policy of Insurance

3.18 U.S. Fire issued a commercial general liability insurance policy, policy number SRPJP-101-0175, to JK Martial Arts (hereinafter the “U.S. Fire Policy”).

3.19 The U.S. Fire Policy had a policy period of March 12, 2016, to March 12, 2017.

3.20 The U.S. Fire Policy provides coverage according to its terms and conditions and not otherwise.

3.21 The U.S. Fire Policy states as follows with regard to who qualifies as an insured:

1. If you are designated in the Declarations as:

...

- d.** An organization other than a partnership, joint venture or limited liability company, you are an insured. Your “executive officers” and directors are insured, but only with respect to their duties as your officers or directors. Your stockholders are also insured, but only with respect to their liability as stockholders.

...

2. Each of the following is also an insured:

- a.** Your ... “employees,” other than either “executive officers”... but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business.

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3.19 With regard to the Insuring Agreement, the U.S. Fire Policy provides as follows:

1. Insuring Agreement

- a.** We will pay those sums that the insured becomes legally obligated to pay as damages because of “bodily injury” or “property damage” to which this insurance applies. We will have the right and duty to defend the insured against any “suit” seeking those damages. However, we will have no duty to defend the insured against any “suit” seeking damages for “bodily injury” or “property damage” to which this insurance

1 does not apply. We may, at our discretion, investigate any
 2 “occurrence” and settle any claim or “suit” that may result.

3 But:

4 (1) The amount we will pay for damages is limited as
 described in Section **III** – Limits Of Insurance; and

5 (2) Our right and duty to defend ends when we have used
 6 up the applicable limit of insurance in the payment of
 judgments or settlements under Coverages **A** or **B** or
 medical expenses under Coverage **C**.

7 No other obligation or liability to pay sums or perform acts or
 8 services is covered unless explicitly provided for under
 Supplementary Payments – Coverages **A** and **B**.

9 **b.** This insurance applies to “bodily injury” and “property
 10 damage” only if:

11 (1) The “bodily injury” or “property damage” is caused by
 12 an “occurrence” that takes place in the “coverage
 territory”;

13 (2) The “bodily injury” or “property damage” occurs
 during the policy period; and

14 (3) Prior to the policy period, no insured listed under
 15 Paragraph 1. Of Section II - Who Is An Insured and no
 “employee” authorized by you to give or receive notice
 16 of an “occurrence” or claim, knew that the “bodily
 injury” or “property damage” had occurred, in whole
 17 or in part. If such a listed insured or authorized
 “employee” knew, prior to the policy period, that the
 18 “bodily injury” or “property damage” occurred, than
 any continuation, change or resumption of such
 19 “bodily injury” or “property damage” during or after
 the policy period will be deemed to have been known
 20 prior to the policy period.

21 **c.** “Bodily injury” or “property damage” which occurs during the
 policy period and was not, prior to the policy period, known to
 22 have occurred by any insured listed under Paragraph **1**. Of
 Section **II** – Who Is An Insured or any “employee” authorized
 to give or receive notice of an “occurrence” or claim, includes
 23 any continuation, change or resumption of that “bodily injury”
 or “property damage” after the end of the policy period.

d. “Bodily injury” or “property damage” will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1. Of Section II - Who Is An Insured or any “employee” authorized by you to give or receive notice of an “occurrence” or claim:

(1) Reports all, or any part, of the “bodily injury” or “property damage” to us or any other Insurer;

(2) Received written or verbal demand or claim for damages because of “bodily injury” or “property damage”; or

(3) Becomes aware by any other means that “bodily injury” or “property damage” has occurred or has begun to occur.

e. Damages because of “bodily injury” include damages claims by any person or organization for care, loss of services or death resulting at any time from the “bodily injury.”

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3.20 The following definitions apply to the above policy provisions:

SECTION V – DEFINITIONS

...

2. “Bodily Injury” means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time

...

13. “Occurrence” means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

...

18. “Suit” means a civil proceeding in which damages because of “bodily injury”, “property damage” or “personal and advertising injury” to which this insurance applies are alleged. “Suit” includes:

- a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent, or
- b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.

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3.21 The U.S. Fire Policy contains the following abuse or molestation exclusion:

ABUSE OR MOLESTATION EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

The following exclusion is added to Paragraph 2., **Exclusions of Section I – Coverage A – Bodily Injury and Property Damage Liability** and Paragraph 2., **Exclusions of Section I – Coverage B – Personal And Advertising Injury Liability**:

This insurance does not apply to the “bodily injury”, “property damage” or “personal and advertising injury” arising out of:

1. The actual or threatened abuse of molestation by anyone of any person while in the care, custody, or control of any insured, or
2. The negligent:
 - a. Employment;
 - b. Investigation;
 - c. Supervision;
 - d. Report to the proper authorities, or failure to so report, or
 - e. Retention;

of a person for whom any insured is or ever was legally responsible and whose conduct would be excluded by Paragraph 1. above.

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3.22 The U.S. Fire Policy contains the following expected or intended injury exclusion:

This insurance does not apply to:

a. Expected Or Intended Injury

“Bodily Injury” or “property damage” expected or intended from the standpoint of the insured. This exclusion does not apply to “bodily injury” resulting from the use of reasonable force to protect persons or property.

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3.23 The U.S. Fire Policy contains the following endorsement regarding defense costs:

A. The provisions of Paragraph **B.** are added to all Insuring Agreements that set forth a duty to defend under:

1. Section **I** of the Commercial General Liability, Commercial Liability Umbrella, Electronic Data Liability, Farm, Liquor Liability, Owners And Contractors Protective Liability, Pollution Liability, Products/Completed Operations Liability, Product Withdrawal, Medical Professional Liability, Railroad Protective Liability and Underground Storage Tank Coverage Parts, Auto Dealers Coverage Form and Farm Umbrella Liability Policy;

...

Paragraph **B.** also applies to any other provision in the policy that sets forth a duty to defend.

B. If we initially defend an insured (“insured”) or pay for an insured’s (“insured’s”) defense but later determine that none of the claims (“claims”), for which we provided a defense or defense costs, are covered under this insurance, we have the right to reimbursement for the defense costs we have incurred.

The right to reimbursement under this provision will only apply to the costs we have incurred after we notify you in writing that there may not be coverage and that we reserving our rights to terminate the defense or the payment of defense costs and to seek reimbursement for defense costs.

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1 **C. Tender to U.S. Fire**

2 3.24 On or about May 24, 2016, counsel for JK Martial Arts, Jung Kuk, and Jerimy
3 and “Jane Doe” Murray tendered a claim to U.S. Fire through an insurance broker.

4 3.25 U.S. Fire promptly initiated an investigation of the claim.

5 3.26 On or about August 11, 2016, U.S. Fire advised Defendants JK Martial Arts,
6 Jung Kuk Kim, Jerimy Murray and “Jane Doe” Murray that U.S. Fire would defend each of these
7 Defendants subject to an express reservation of rights.

8 3.27 U.S. Fire assigned the law firm of Clement & Drotz, PLLC as counsel to defend
9 JK Martial Arts, Jung Kuk Kim, Jerimy Murray and “Jane Doe” Murray in the Underlying
10 Action.

11 **IV. THERE IS NO COVERAGE AVAILABLE UNDER THE U.S. FIRE POLICY**

12 4.1 U.S. Fire reasserts Paragraphs 1.1 through 3.27 as fully set forth herein.

13 4.2 U.S. Fire has no duty to defend JK Martial Arts, Jung Kuk Kim, Katarina Park,
14 Jerimy Murray, or “Jane Doe” Murray against the claims asserted by Underlying Plaintiffs in the
15 Underlying Action.

16 4.3 U.S. Fire has no duty to indemnify JK Martial Arts, Jung Kuk Kim, Katarina
17 Park, Jerimy Murray, or “Jane Doe” Murray for the claims asserted by Underlying Plaintiffs in
18 the Underlying Action.

19 4.4 The rights and obligations of U.S. Fire are defined by the terms and conditions of
20 the policy of insurance issued by U.S. Fire to JK Martial Arts.

21 4.5 U.S. Fire requests that the Court grant declaratory relief by entering a judicial
22 determination that U.S. Fire has no obligations under the U.S. Fire Policy to provide defense or
23 indemnity coverage to JK Martial Arts, Jung Kuk Kim, Katarina Park, Jerimy Murray, or “Jane
Doe” Murray for the claims asserted in the Underlying Action.

1 4.6 The U.S. Fire Policy provides coverage according to its terms and conditions and
2 not otherwise.

3 4.7 With regard to an organization that is designated as an insured on the declarations
4 page of the U.S. Fire Policy, but which is not a partnership, joint venture, or limited liability
5 company, the U.S. Fire Policy provides that the “executive offices” and directors of said
6 organization are also insureds, but only with respect to their duties as officers or directors.

7 4.8 There is an actual and justiciable controversy as to whether Jung Kuk Kim,
8 Katarina Park, Jerimy Murray and/or “Jane Doe” Murray qualify as insureds under the U.S. Fire
9 Policy.

10 4.9 The U.S. Fire Policy further includes as an insured an “employee” of the Named
11 Insured, other than “executive officers”, but only for acts within the scope of their employment
12 or while performing duties related to the conduct of the Named Insured’s business.

13 4.10 There is an actual and justiciable controversy as to whether Jung Kuk Kim,
14 Katarina Park, Jerimy Murray and/or Jane Doe Murray qualify as insureds under the U.S. Fire
15 Policy.

16 4.11 The U.S. Fire Policy only provides coverage for “bodily injury” caused by an
17 “occurrence”, as those terms are defined by the U.S. Fire Policy, provided that such “bodily
18 injury” occurs during the policy period.

19 4.12 There is an actual and justiciable controversy as to whether the liability of
20 JK Martial Arts, Jung Kuk Kim, Katarina Park, Jerimy Murray, and/or “Jane Doe” Murray is the
21 result of an “occurrence” as that term is defined within the U.S. Fire Policy.

22 4.13 There is an actual and justiciable controversy as to whether the alleged damages
23 constitute “bodily injury” as that term is defined in the U.S. Fire Policy.

1 4.14 There is an actual and justiciable as to whether the alleged damage took place
2 during the applicable policy period.

3 4.15 The U.S. Fire Policy only provides coverage where no insured had knowledge of
4 any “bodily injury” prior to the policy period.

5 4.16 There is an actual and justiciable controversy as to whether any insured had
6 knowledge of any “bodily injury” prior to the inception of the U.S. Fire Policy.

7 4.17 The U.S. Fire Policy excludes coverage for “bodily injury” that is expected or
8 intended from the standpoint of the insured.

9 4.18 There is an actual and justiciable controversy as to whether any of the alleged
10 “bodily injury” was expected or intended from the standpoint of any insured.

11 4.19 The U.S. Fire Policy excludes coverage for “bodily injury” arising out of actual or
12 threatened abuse or molestation by anyone, of any person, while in the care, custody or control
13 of any insured.

14 4.20 There is an actual and justiciable controversy as to whether the alleged damages
15 arise out of actual or threatened abuse or molestation.

16 4.21 The U.S. Fire Policy further excludes coverage for “bodily injury” arising out of
17 the negligent employment, investigation, supervision, reporting or failure to report, or retention
18 of a person for whom any insured is, or ever was, legally responsible for and whose conduct
19 constituted actual or threatened abuse or molestation.

20 4.22 There is an actual and justiciable controversy as to whether the alleged damages
21 arise out of the negligent employment, investigation, supervision, reporting or failure to report,
22 or retention of a person for whom any insured was legally responsible for and whose conduct
23 constituted actual or threatened abuse or molestation.

1 4.23 The U.S. Fire Policy permits the reimbursement of defense costs incurred when it
2 is determined that none of the claims for which a defense has been provided are covered.

3 4.24 There is an actual and justiciable controversy as to whether U.S. Fire is entitled to
4 reimbursement for defense costs.

5 4.25 U.S. Fire reserves the right to assert any other exclusions or grounds for which
6 coverage for the subject claims may be excluded under the U.S. Fire Policy.

7 **V. REQUEST FOR DECLARATORY RELIEF**

8 5.1 U.S. Fire reasserts paragraphs 1.1 through 4.25 as if fully set forth herein.

9 5.2 Actual and justiciable controversies exist as to whether any coverage is available
10 to Defendants under the U.S. Fire Policy for the claims asserted by the Underlying Plaintiffs, as
11 set forth above.

12 5.3 U.S. Fire requests that the Court grant declaratory relief asserting a judicial
13 determination that U.S. Fire has no obligation for defense or indemnity coverage for the claims
14 asserted in the Underlying Action.

15 5.4 Actual and justiciable controversies exist as to whether U.S. Fire is entitled to
16 reimbursement of defense costs.

17 5.5 U.S. Fire requests that the Court grant declaratory relief asserting a judicial
18 determination that U.S. Fire is entitled to the reimbursement of defense costs incurred in
19 defending JK Martial Arts, Jung Kuk Kim, Jerimy Murray and/or “Jane Doe” Murray in the
20 Underlying Action.

21 **VI. PRAYER FOR RELIEF**

22 Wherefore U.S. Fire prays for the following relief:

23 1. A declaration that there is no defense or indemnity coverage available to
JK Martial Arts, Jung Kuk Kim, Katarina Park, Jerimy Murray and/or “Jane Doe” Murray under

1 the policy of insurance issued by U.S. Fire for the claims asserted by Underlying Plaintiffs in the
2 Underlying Action.

3 2. A declaration that U.S. Fire is entitled to reimbursement of defense costs per the
4 terms and conditions of the U.S. Fire Policy.

5 3. For all interests allowed by law.

6 4. For attorneys' fees and costs to the extent allowed by statute and law.

7 5. For any other relief the Court deems just and equitable.

8 DATED this 13th day of December 2016.

9 LETHER & ASSOCIATES, PLLC

10 /s/ Thomas Lether

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